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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,743	01/09/2007	John Hillel Moshal	06-278	8207

20306 7590 07/31/2009

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ART UNIT	PAPER NUMBER
3714	

MAIL DATE	DELIVERY MODE
07/31/2009	PAPER

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/576,743
Filing Date: January 09, 2007I
Appellant(s): MOSHAL, JOHN HILLEL

John A. Machonkin
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 22, 2009 appealing from the Office action mailed November 24, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 6,108,300	Coile et al	8-2000
US 5,674,128	Holch et al	10-1997
US 2003/0120685 A1	Duncombe et al	6-2003

(9) Grounds of Rejection

The following modified ground(s) of rejection are applicable to the appealed claims:

Claims 26-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coile et al (US 6,108,300) in view of Holch et al (US 5,674,128).

Re claim 26, 29 & 34. Coile et al discloses a system and method of operating the system comprising a primary server (110, Figure 1) and a secondary or backup server (120, Figure 1) located remotely from a station or client (100, Figure 1) and communicable with the station or client via a communication network such as the Internet because the client communicates remotely to the server (110 & 120, Fig. 1); a watchdog facility (i.e. an application) configures the primary server to receive data packet at regular intervals transmitted by a client and whenever an expected response is not received from the primary gaming sever within a predetermined time interval, to

change a status of the primary gaming server from active to failed (i.e. the client sends, at regular intervals, data to the primary server and when the client does not receive a response from the primary server within a time frame, it senses that a failure has occurred and a switch to the backup server is necessary, col. 2, lines 50-59); and a controller in the station or client for routing a request to provide an outcome or result, wherein the controller routes the request to the primary server when the status of the primary server is active (i.e. with the use of the primary MAC and IP address) and routes the request to the secondary or backup server when the status of the primary server is failed (i.e. with the use of the backup MAC and IP address) (2:50-3:2).

Coile et al teaches the invention substantially as claimed, but does not discloses the system being a gaming system comprising a player station displaying a simulation of a game and a gaming server with a random number generator. Holch et al discloses a gaming system and a method of operating the gaming system comprising a player station (100n, Fig. 1) displaying a simulation of a game and a gaming server with a random number generator (300, Fig. 3). Coile et al and Holch et al are analogous art because they are from the same field of endeavor of networking systems. At the time of invention a person of ordinary skill in the art would have found it obvious to apply Coile et al's backup server system to a gaming system to provide entertainment with fewer server disconnections.

Re claim 27-28 & 35-36. As noted above in combination of Coile et al and Holch et al, Coile et al discloses the use of a primary and secondary/backup server and Holch et al discloses the present of a software random number regenerator (300, Fig. 3) in the

server, hence the primary gaming server would use a primary random number generator to determine outcomes for the game of chance and the secondary gaming server uses a secondary/backup random generator to determined outcomes for the game of chance.

Re claim 30-32 & 37-39. Coile et al discloses the watchdog facility or program being executed on the player station on client and generates an alarm or notification when the status of the primary gaming server changes from active to failed, wherein the notification is obviously visible or audible to inform the status change (col. 2, lines 64-3:2).

Claims 33 & 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coile et al (US 6,108,300) and Holch et al (US 5,674,128) as applied to claims 26 & 34, and further in view of Duncombe et al (US 2003/0120685 A1).

Coile et al and Holch et al teach the invention substantially as claimed, but do not disclose the primary and secondary servers synchronizing their data at regular intervals. However, synchronizing the secondary server with the primary server is well known in the art as evidence by Duncombe et al [0093]. At the time of invention a person of ordinary skill in the art would have found it obvious to modify the method and system of Coile et al and Holch et al to synchronize the secondary server with the primary server as done by Duncombe et al and would have been motivated to do so to provide an interrupted service and loss of data when the primary server fails and a transition to the secondary server is needed.

(10) Response to Argument

1. The Examiner has used an improper "mix-and-match" approach

Appellant argues that the examiner did an improper mix-and-match rejection by relying on some features of one system disclosed in Coile (Figure 1, including client 100) and relying on other features of a completely contrary system disclosed in Coile (Figure. 2, including client 200), as if these two, contrary system were one and the same system. The examiner agrees with appellant after looking at the Coile reference again. The examiner mistakenly used Figure 2 to only point out the present of a primary server A and a backup server B; thinking Figure 2 was a part of Figure 1. The examiner in the corrected rejection above only refers to Figure 1 to teach the present of a primary network device or server (Fig. 1, 110) and a backup network device or server (Fig. 1, 120). Referring to only the Figure 1 system, Coile teach a watchdog facility (i.e. an application) on the client's device (100) to send out data packets to the primary server at regular intervals because the client is constantly communicating with the server and whenever the client does not receive a response from the primary server within a time frame, it senses that a failure has occurred and a switch to the backup server is necessary (col. 2, lines 50-59).

2. Coile does not disclose the claimed "watchdog facility"

Appellant argues that Coile does not teach "a watchdog facility configures to (i) transmit a **data packet** to the primary gaming server at regular intervals and (ii) whenever an **expected response** is not received from the primary gaming server within

a predetermined time interval, to change a status of the primary gaming server from active to failed." The examiner disagrees because a watchdog facility is program or application in the client's device that determines if the connection to a primary server is broken. Coile teach a watchdog facility (i.e. an application, col. 2, lines 60-63) on the client's device (100) to send out data packets (i.e. information to be communicated between the primary server and the client) to the primary server at regular intervals because the client is constantly communicating with the server and whenever the client does not receive a response from the primary server within a time frame, it senses that a failure has occurred and a switch to the backup server is necessary (col. 2, lines 50-59).

Appellant further argues that Coile's process for determining active or failed status relies on **one-way** communication (receiving an expected message within an expected period of time). The examiner disagrees. Coile does disclose a two-way communication because the client has to (i) transmit the data packet to the server and (ii) waits for a response within a predetermined period of time for determining whether to change the status of the primary gaming server from active to failed (col. 2, lines 50-65). Clearly, the client can not receive an **expected** response without first sending a data packet for the server to respond to; therefore the system discloses a two-way communication.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Seng H Lim/
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Conferees:

/Dmitry Suhol/
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